



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 11, 2003

Mr. Rene Ruiz
Matthews and Branscomb, P.C.
112 East Pecan, Suite 1100
San Antonio, Texas 78205

OR2003-1597

Dear Mr. Ruiz:

On behalf of the City of Seguin (the "city"), you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177886.

The city received a request for the "internal case logs from the 24th and 25th Judicial District Narcotics Task Force containing information related to cases worked by the Task Force from Jan. 1, 2002 to present." You inform us that the city will release to the requestor the basic information about an arrested person, an arrest, or crime in accordance with the decision in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). You claim that the remaining requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered your claims and reviewed the submitted information, which you say is a representative sample of the requested information.

Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

¹The city withdrew its section 552.101 claim in its January 13, 2003, correspondence to this office.

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the city received the request for information on December 18, 2002. The tenth business day was January 7, 2003. You did not raise section 552.108 until January 8, 2003. Consequently, you failed to raise section 552.108 within the ten business day period mandated by section 552.301(b) of the Government Code. Because your section 552.108 claim was not timely received, we cannot consider your section 552.108 claim unless that claim presents a compelling reason why the information should not be disclosed. Gov't Code § 552.302.; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision Nos. 630 (1994); 515 (1988). A compelling reason exists when the information is deemed confidential by some other source of law or when third-party interests are at stake. Open Records Decision No. 150 (1977). Section 552.108, the law enforcement exception, is not a compelling reason for excepting the requested information from disclosure in this case. See Open Records Decision Nos. 586 (1991); *but see id.* (compelling interest exists when law enforcement interests of another law enforcement entity are shown). Consequently, the city may not withhold the requested information from disclosure based on section 552.108.

Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal*

Found., 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

The purpose of section 552.103 is to protect the litigation interest of the governmental body claiming the exception. Open Records Decision No. 638 at 2 (1996). Thus, section 552.103 applies only where the litigation involves or is expected to involve the governmental body which is claiming the exception. Open Records Decision No. 392 (1983). You have not shown that the city is a party to pending or reasonably anticipated litigation. Consequently, the city has not established the applicability of section 552.103 to the requested information.

In conclusion, the city has not shown the applicability of section 552.103 or 552.108 to the requested information. Thus, the city must release the requested information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

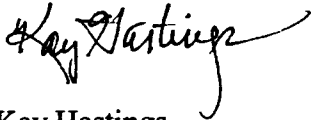
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Hastings", written in a cursive style.

Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 177886

Enc: Submitted documents

c: Mr. Bill O'Connell
Gazette Enterprise
P.O. Box 1200
Seguin, Texas 78156
(w/o enclosures)